

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 855

**Introduced by Assembly Members Ma and Hagman
(Principal coauthor: Assembly Member Logue)
(Coauthor: Assembly Member Gorell)**

February 17, 2011

An act to amend Section ~~76104.6 of the Government Code~~ ~~6018.3 of the Revenue and Taxation Code~~, relating to ~~county penalties~~ ~~taxation~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 855, as amended, Ma. ~~County penalties: forensic laboratories. Sales and use taxes: consumers: veterans: itinerant vendors.~~

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price. That law, with certain exceptions, defines a retailer as a seller who makes any retail sale of tangible personal property and as a person who makes more than 2 retail sales of tangible personal property during any 12-month period, and defines a retail sale as a sale of tangible personal property for any purpose other than resale in the regular course of business.

Existing law, from September 6, 2011, to January 1, 2022, provides that a qualified itinerant vendor, as defined, is a consumer, and not a retailer, of tangible personal property owned and sold by the qualified

itinerant vendor, except for alcoholic beverages or items sold for more than \$100, so that the retail sale subject to tax is the sale of tangible personal property to the qualified itinerant vendor.

This bill would apply this provision beginning on and after January 1, 1986. This bill would make findings regarding the public purpose served by the bill.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

~~Existing law, the DNA Fingerprint, Unresolved Crime and Innocence Protection Act, an initiative measure, requires an additional penalty of \$1 for every \$10 or part thereof to be levied in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, as specified. The act requires the county board of supervisors to establish in the county treasury a DNA Identification Fund, into which the collected penalties are to be deposited. The act requires 25% of the moneys in the county fund to be transferred to the state's DNA Identification Fund and specifies the purposes for which funds in the county's and the state's DNA Identification Funds may be used, including to reimburse local sheriff, police, district attorney, and regional state crime laboratories for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA crime scene samples, as specified. The act provides for its amendment by the Legislature if the amendments further the act and are consistent with its purpose to enhance the use of DNA identification evidence for the purpose of accurate and expeditious crime solving and exonerating the innocent.~~

~~This bill would provide that, if authorized by a resolution of the board of supervisors, funds remaining in the county's DNA Identification~~

~~Fund may be used to reimburse a local sheriff, police, district attorney, or regional state crime laboratory for expenditures and administrative costs made or incurred for utilizing an authorized laboratory for the processing and analysis of forensic identification samples and testimony related to that analysis, as specified.~~

~~The bill would declare that its provisions further the initiative act and are consistent with its purposes.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 6018.3 of the Revenue and Taxation Code*
2 *is amended to read:*
3 6018.3. (a) ~~A~~*On and after January 1, 1986, a* qualified
4 itinerant vendor is a consumer of, and shall not be considered a
5 retailer of, tangible personal property owned and sold by the
6 qualified itinerant vendor, except alcoholic beverages or tangible
7 personal property sold for more than one hundred dollars (\$100).
8 (b) For purposes of this section, a person is a “qualified itinerant
9 vendor” when all of the following apply:
10 (1) The person was a member of the Armed Forces of the United
11 States, who received an honorable discharge or a release from
12 active duty under honorable conditions.
13 (2) The person is unable to obtain a livelihood by manual labor
14 due to a service-connected disability.
15 (3) For the purposes of selling tangible personal property, the
16 person is a sole proprietor with no employees.
17 (4) The person has no permanent place of business in this state.
18 (c) For purposes of this section, “permanent place of business”
19 means any building or other permanently affixed structure,
20 including a residence, that is used in whole or in part for the
21 purpose of making sales of, or taking orders and arranging for
22 shipment of, tangible personal property. For purposes of this
23 section, “permanent place of business” does not include any
24 building or other permanently affixed structure, including a
25 residence, used for any of the following:
26 (1) The storage of tangible personal property.

(2) The cleaning or the storage of equipment or other property used in connection with the manufacture or sale of tangible personal property.

(d) This section shall not apply to either of the following:

(1) A person engaged in the business of serving meals, food, or drinks to a customer at a location owned, rented, or otherwise supplied by the customer.

(2) A person operating a vending machine.

(e) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

SEC. 2. The Legislature finds and declares that the amendment of Section 6081.3 of the Revenue and Taxation Code by this act serves a public purpose and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

~~SECTION 1. Section 76104.6 of the Government Code is amended to read:~~

~~76104.6. (a) (1) Except as otherwise provided in this section, for the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69), as approved by the voters at the November 2, 2004, statewide general election, there shall be levied an additional penalty of one dollar (\$1) for every ten dollars (\$10), or part of ten dollars (\$10), in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code.~~

~~(2) The penalty imposed by this section shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code. The moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. The board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the moneys collected pursuant to this section. The moneys of the fund shall be allocated pursuant to subdivision (b).~~

1 ~~(3) The additional penalty does not apply to the following:~~

2 ~~(A) A restitution fine.~~

3 ~~(B) A penalty authorized by Section 1464 of the Penal Code or~~
4 ~~this chapter.~~

5 ~~(C) A parking offense subject to Article 3 (commencing with~~
6 ~~Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.~~

7 ~~(D) The state surcharge authorized by Section 1465.7 of the~~
8 ~~Penal Code.~~

9 ~~(b) (1) The fund moneys described in subdivision (a), together~~
10 ~~with any interest earned thereon, shall be held by the county~~
11 ~~treasurer separate from any funds subject to transfer or division~~
12 ~~pursuant to Section 1463 of the Penal Code. Deposits to the fund~~
13 ~~may continue through and including the 20th year after the initial~~
14 ~~calendar year in which the surcharge is collected, or longer if and~~
15 ~~as necessary to make payments upon any lease or leaseback~~
16 ~~arrangement utilized to finance any of the projects specified herein.~~

17 ~~(2) On the last day of each calendar quarter of the year specified~~
18 ~~in this subdivision, the county treasurer shall transfer fund moneys~~
19 ~~in the county's DNA Identification Fund to the Controller for credit~~
20 ~~to the state's DNA Identification Fund, which is hereby established~~
21 ~~in the State Treasury, as follows:~~

22 ~~(A) In the first two calendar years following the effective date~~
23 ~~of this section, 70 percent of the amounts collected, including~~
24 ~~interest earned thereon.~~

25 ~~(B) In the third calendar year following the effective date of~~
26 ~~this section, 50 percent of the amounts collected, including interest~~
27 ~~earned thereon.~~

28 ~~(C) In the fourth calendar year following the effective date of~~
29 ~~this section and in each calendar year thereafter, 25 percent of the~~
30 ~~amounts collected, including interest earned thereon.~~

31 ~~(3) Funds remaining in the county's DNA Identification Fund~~
32 ~~shall be used only for the following purposes:~~

33 ~~(A) To reimburse a local sheriff or other law enforcement agency~~
34 ~~for the collection of DNA specimens, samples, and print~~
35 ~~impressions pursuant to this chapter.~~

36 ~~(B) For expenditures and administrative costs made or incurred~~
37 ~~to comply with the requirements of paragraph (5) of subdivision~~
38 ~~(b) of Section 298 of the Penal Code, including the procurement~~
39 ~~of equipment and software integral to confirming that a person~~

1 qualifies for entry into the Department of Justice DNA and Forensic
2 Identification Database and Data Bank Program.

3 ~~(C) If authorized by a resolution of the county board of~~
4 ~~supervisors, to reimburse a local sheriff, police, district attorney,~~
5 ~~or regional state crime laboratory for expenditures and~~
6 ~~administrative costs made or incurred for utilizing a laboratory~~
7 ~~that meets state and federal requirements, including the Federal~~
8 ~~Bureau of Investigation Quality Assurance Standards, and that is~~
9 ~~accredited by an organization approved by the National DNA Index~~
10 ~~System Procedures Board for the processing and analysis of~~
11 ~~forensic identification samples and testimony related to that~~
12 ~~analysis in order to expedite the analysis of crime scene samples~~
13 ~~and proceed with a pending criminal action or investigation within~~
14 ~~that county.~~

15 ~~(D) To reimburse a local sheriff, police, district attorney, or~~
16 ~~regional state crime laboratory for expenditures and administrative~~
17 ~~costs made or incurred in connection with the processing, analysis,~~
18 ~~tracking, and storage of DNA crime scene samples from cases in~~
19 ~~which DNA evidence would be useful in identifying or prosecuting~~
20 ~~suspects, including the procurement of equipment and software~~
21 ~~for the processing, analysis, tracking, and storage of DNA crime~~
22 ~~scene samples from unsolved cases.~~

23 ~~(4) The state's DNA Identification Fund shall be administered~~
24 ~~by the Department of Justice. Funds in the state's DNA~~
25 ~~Identification Fund, upon appropriation by the Legislature, shall~~
26 ~~be used by the Attorney General only to support DNA testing in~~
27 ~~the state and to offset the impacts of increased testing and shall be~~
28 ~~allocated as follows:~~

29 ~~(A) Of the amount transferred pursuant to subparagraph (A) of~~
30 ~~paragraph (2) of subdivision (b), 90 percent to the Department of~~
31 ~~Justice DNA Laboratory, first, to comply with the requirements~~
32 ~~of Section 298.3 of the Penal Code and, second, for expenditures~~
33 ~~and administrative costs made or incurred in connection with the~~
34 ~~processing, analysis, tracking, and storage of DNA specimens and~~
35 ~~samples including the procurement of equipment and software for~~
36 ~~the processing, analysis, tracking, and storage of DNA samples~~
37 ~~and specimens obtained pursuant to the DNA and Forensic~~
38 ~~Identification Database and Data Bank Act of 1998, as amended~~
39 ~~by Chapter 6 (commencing with Section 295) of Title 9 of Part 1~~
40 ~~of the Penal Code, and 10 percent to the Department of Justice~~

1 ~~Information Bureau Criminal History Unit for expenditures and~~
2 ~~administrative costs that have been approved by the Chief of the~~
3 ~~Department of Justice Bureau of Forensic Services made or~~
4 ~~incurred to update equipment and software to facilitate compliance~~
5 ~~with the requirements of subdivision (e) of Section 299.5 of the~~
6 ~~Penal Code.~~

7 ~~(B) Of the amount transferred pursuant to subparagraph (B) of~~
8 ~~paragraph (2) of subdivision (b), funds shall be allocated by the~~
9 ~~Department of Justice DNA Laboratory, first, to comply with the~~
10 ~~requirements of Section 298.3 of the Penal Code and, second, for~~
11 ~~expenditures and administrative costs made or incurred in~~
12 ~~connection with the processing, analysis, tracking, and storage of~~
13 ~~DNA specimens and samples including the procurement of~~
14 ~~equipment and software for the processing, analysis, tracking, and~~
15 ~~storage of DNA samples and specimens obtained pursuant to the~~
16 ~~DNA and Forensic Identification Database and Data Bank Act of~~
17 ~~1998, as amended.~~

18 ~~(C) Of the amount transferred pursuant to subparagraph (C) of~~
19 ~~paragraph (2) of subdivision (b), funds shall be allocated by the~~
20 ~~Department of Justice to the DNA Laboratory to comply with the~~
21 ~~requirements of Section 298.3 of the Penal Code and for~~
22 ~~expenditures and administrative costs made or incurred in~~
23 ~~connection with the processing, analysis, tracking, and storage of~~
24 ~~DNA specimens and samples including the procurement of~~
25 ~~equipment and software for the processing, analysis, tracking, and~~
26 ~~storage of DNA samples and specimens obtained pursuant to the~~
27 ~~DNA and Forensic Identification Database and Data Bank Act of~~
28 ~~1998, as amended.~~

29 ~~(e) On or before April 1 in the year following adoption of this~~
30 ~~section, and annually thereafter, the board of supervisors of each~~
31 ~~county shall submit a report to the Legislature and the Department~~
32 ~~of Justice. The report shall include the total amount of fines~~
33 ~~collected and allocated pursuant to this section, and the amounts~~
34 ~~expended by the county for each program authorized pursuant to~~
35 ~~paragraph (3) of subdivision (b). The Department of Justice shall~~
36 ~~make the reports publicly available on the department's Internet~~
37 ~~Web site.~~

38 ~~(d) All requirements imposed on the Department of Justice~~
39 ~~pursuant to the DNA Fingerprint, Unsolved Crime and Innocence~~
40 ~~Protection Act are contingent upon the availability of funding and~~

1 are limited by revenue, on a fiscal year basis, received by the
2 Department of Justice pursuant to this section and any additional
3 appropriation approved by the Legislature for purposes related to
4 implementing this act.

5 (e) Upon approval of the DNA Fingerprint, Unsolved Crime
6 and Innocence Protection Act, the Legislature shall lend the
7 Department of Justice General Fund in the amount of seven million
8 dollars (\$7,000,000) for purposes of implementing the act. The
9 loan shall be repaid with interest calculated at the rate earned by
10 the Pooled Money Investment Account at the time the loan is made.
11 Principal and interest on the loan shall be repaid in full no later
12 than four years from the date the loan was made and shall be repaid
13 from revenue generated pursuant to this section.

14 (f) Notwithstanding any other law, the Controller may use the
15 state's DNA Identification Fund, created pursuant to paragraph
16 (2) of subdivision (b), for loans to the General Fund as provided
17 in Sections 16310 and 16381. Any such loan shall be repaid from
18 the General Fund with interest computed at 110 percent of the
19 Pooled Money Investment Account rate, with the interest
20 commencing to accrue on the date the loan is made from the fund.
21 This subdivision does not authorize any transfer that will interfere
22 with the carrying out of the object for which the state's DNA
23 Identification Fund was created.

24 SEC. 2. The Legislature hereby finds and declares that the
25 amendments made by this act to Section 76104.6 of the
26 Government Code further the DNA Fingerprint, Unresolved Crime
27 and Innocence Protection Act as enacted by the approval of
28 Proposition 69 at the November 3, 2004, general election, and is
29 consistent with the act's purposes.